IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

RSA.No. 435 of 2003()

AS.166/2000 of ADDL.SUB COURT, ALAPPUZHA
OS.1226/1998 of ADDL.MUNSIFF COURT, ALAPPUZHA

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: APPLICANT/APPELLANT/PLAINTIFF

S.BABU, GOKULAM HOUSE,
(KAMPIVELIYIL) WARD NO.IV, PUNNAPRA PANCHAYAT,
PUNNAPRA, ALAPPUZHA DISTRICT.

BY ADV. SRI.SHEEJO CHACKO

RESPONDENTS: RESPONDENTS/DEFENDANTS

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1. ARAVUKAD KSHETHRAYOGAM, PARAVOOR,
P.O.PUNNAPRA, REPRESENTED BY ITS SECRETARY
K.MOHANAN, THARAMESHATHU PADINJAREKKARA HOUSE,
VANDANAM, ALAPPUZHA DISTRICT.

2. ARAVUKAD INDUSTRIAL TRAINING CENTRE,
PUNNAPRA, ALAPPUZHA REPRESENTED BY ITS
MANAGER SASIDHARAN, MADRASAVELI,
PUNNAPRA P.O., ALAPPUZHA DISTRICT.

BY ADV. SRI.K.S.HARIHARAPUTHRAN
SRI.GEORGE MATHEW FOR R1

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 31/05/2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 435 OF 2003

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Dated this the 31st day of May, 2007

JUDGMENT

Appellant is the plaintiff in O.S.1226/1998 on the file of the Munsiff Court, Alappuzha. Respondents are the defendants. Appellant instituted the suit seeking a decree for declaration that Ext.A4 order issued by first respondent dismissing him from service of second respondent as an Instructor is null and void and not enforceable in law and therefore he is entitled to be reinstated in service. He also sought a decree for mandatory injunction directing respondents to reinstate him in service. Appellant was appointed as an Instructor in second respondent Aravukad Industrial Training Centre, Punnapra on 14.6.1990. On 10.8.1998, he was placed under suspension under Ext.A1 order and after an enquiry pursuant to Ext.A3 memo of charges he was dismissed from service. It was challenged in the

suit contending that the dismissal was illegal and the procedures were not complied with before dismissing him from service and as the dismissal is in violation of the principles of natural justice, it is to be declared null and void. Respondents filed a written statement contending that the suit itself is not maintainable and if at all the remedy is to claim damages. It was contended that first respondent is an unregistered voluntary association and employment of appellant is not protected by any statute and after due enquiry he was dismissed from service and it cannot be challenged in the civil court and therefore appellant is not entitled to the decree sought for.

2. Learned Munsiff framed the necessary issues. On the evidence of Pws. 1 to 5, DW1 and Exts.A1 to A12 and Exts.B1 to B4, learned Munsiff dismissed the suit holding that appellant is not entitled to the protection of any statute and therefore he is not entitled to the decree sought for. Appellant challenged the decree and judgment before Sub

Court, Alappuzha in A.S.166/2000. Learned Additional Sub Judge on reappreciation of evidence confirmed the finding of the learned Munsiff and dismissed the appeal. It is challenged in the Second Appeal.

3. Notice was issued to respondents before admission.

4. Learned counsel appearing for appellant was heard after the respondents appeared.

5. The arguments of learned counsel appearing for appellant was that findings of courts below establish that due enquiry was not conducted before appellant was dismissed from service and the order of dismissal without complying with the principles of natural justice is unsustainable and therefore courts below should have granted the decree sought for. Relying on the decision of the Apex Court in **A.Sundarambal v. Govt. of Goa, Daman & Diu (AIR 1988 SC 1700)** it was argued that though the Supreme Court found the employee was entitled to the

protection from dismissal damages was awarded and in such circumstances, as appellant was dismissed from service in violation of natural justice, courts below should have granted atleast damages to him.

6. On hearing the counsel for the appellant, I do not find any substantial question of law involved in the appeal.

7. Even according to appellant, he is not protected by any of the statute. He is not a workman as provided under the Industrial Disputes Act and is not entitled to get protection of the said Act. The courts below rightly found that appellant is not entitled to challenge the order of dismissal, in the absence of any statutory protection available to him. Though learned counsel appearing for appellant argued that the dismissal was a wrongful dismissal, it was not pointed out as to how the dismissal was wrongful. Even according to appellant, the terms of employment does not provide for any mode of enquiry

to be conducted, before he could be dismissed from service. Respondents conducted an enquiry to their satisfaction and dismissed appellant from service finding that his continuance in their service is not condusive. In such circumstance, civil court cannot interfere with the order of dismissal and appellant is not entitled to get a decree for reinstatement in service.

8. Though it was argued that Apex Court had granted damages in a case where an employee was dismissed from service eventhough he is not a **workman** as defined under the Industrial Disputes Act in **Sundarambal's case (supra)**, the facts are entirely different. In that case, damages of Rs.40,000/- was granted in full and final settlement of the claims of the employee not on the basis of any legal right. As is clear from paragraph 12 of the judgment, it was on the voluntary statement made by the counsel who appeared for the management that the said amount

could be given to the appellant, damages was awarded. It cannot be said that Sundarambal's case lays down a law to the effect that, even if a person is not entitled to any statutory protection and is dismissed from service, he is entitled to get damages. I find no substantial question of law involved in the appeal.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006